FILED
MAY 16 1986
JOSEPH F. SPANIOL, JR.
CLERK

(3)

NO. 85-1441

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

DONNA WASHINGTON; HELENE STONE, INDIVIDUALLY AND AS NEXT FRIEND TO MARLO STONE; JEANETTE MAWAE, INDIVIDUALLY AND AS NEXT FRIEND TO JOSETTE MAWAE; ROBERTA DeMELLO; ALFRED DeMELLO, JR., INDIVIDUALLY AND AS NEXT FRIEND TO ROXANNE NAKAMURA, AND ON BEHALF OF THEMSELVES AND ALL THOSE SIMILARLY SITUATED,

PETITIONERS,

vs.

THE STATE OF HAWAII AND FIREMAN'S FUND INSURANCE COMPANIES,

RESPONDENTS.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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INSURANCE COMPANIES

QUESTIONS PRESENTED

Do §§ 294-2(10), 294-2(18), 294-22(b)(2) and 294-24(b) and (2) of the Hawaii Revised Statutes ("HRS"), which sections provide public assistance recipients with a free limited no-fault automobile insurance policy and preclude such recipients from receiving medical benefits under Hawaii's no-fault law because they receive comparable medical benefits under Hawaii's Medicaid program, violate the equal protection and due process guarantees of the Fourteenth Amendment of the United States Constitution?

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TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Your Respondent, FIREMAN'S FUND INSURANCE COMPANIES ("FIREMAN'S FUND"), respectfully requests that this Court deny the Petition for Writ of Certiorari,

seeking review of the Supreme Court of the State of Hawaii's opinion in this case. That opinion is reported at 68 Haw. _____, 708 P.2d 129 and is reprinted as the Appendix to the Petition.

JURISDICTION

Petitioner has invoked the jurisdiction of this Court pursuant to 28 U.S.C. § 1257(3). That statute requires that in the state courts Petitioners have "specially set up or claimed under the Constitution ... or ... the United States" that right which they now seek to have this Court enforce. Webb v. Webb, 451 U.S. 493 (1981). Similarly, Rule 21.1(h) of the Rules of the Supreme Court of the United States requires the Petitioners to "specify the stage in the proceedings, both in the court of the first instance and in the appellate court, at which the federal

questions sought to be reviewed were raised; the method or manner of raising them and the way in which they were passed upon by the court." Respondent FIREMAN'S FUND respectfully submits that although federal questions may have been raised in the proceedings against the STATE OF HAWAII ("STATE") in Appeal No. 9965, no federal questions were ever raised against FIREMAN'S FUND in either the court of the first instance or in the state appellate court.

In the court of first instance in Appeal No. 9411, Petitioner WASHINGTON propounded only one theory in support of her position in her Memorandum in Opposition to Motion for Summary Judgment; the argument was to the effect that WASHINGTON was entitled to receive compensation for chiropractic and massage treatments under HRS § 294-2(10)(D). [Appeal No. 9411,

Record on Appeal, pp. 77-82.] Nothing in the record even hints that she was also relying on an equal protection or on a due process theory. She never challenged the constitutionality of the statute on its face or as applied to her particular circumstances.

Furthermore, in Petitioners' Reply Brief in the Supreme Court of the State of Hawaii, Petitioners state that "their constitutional arguments against Chapter 294, Hawaii Revised Statutes, ... are not being asserted against FIREMAN'S FUND in ... [the Supreme Court of the State of Hawaii] .... Because of the circumstances surrounding the consolidation of these appeals, FIREMAN'S FUND's position with respect to the Stone v. State of Hawaii appeal [Appeal No. 9965] is, in fact, that of an amicus curiae. Its argument that constitutional claims are being asserted

against it is unfounded." Plaintiffs-Appellants' Reply Brief at 7.

In view of the record, FIREMAN'S FUND respectfully submits that this Honorable Court is without jurisdiction to hear the appeal of the Washi on v. Fireman's Fund Insurance Companies and State of Hawaii case, Appeal No. 9411. Accordingly, FIREMAN'S FUND requests that Appeal No. 9411 be severed from Appeal No. 9965, and that the Writ be denied for want of jurisdiction as to Appeal No. 9411.

STATUTES INVOLVED

The relevant constitutional provisions and statutes involved in this case are reprinted in the Petition at pp. 8-19.

STATEMENT OF THE CASE

FIREMAN'S FUND has no objection to the matter contained in Petitioners' Statement

of the Case; however, it should be clearly pointed out that FIREMAN'S FUND is a party only in Appeal No. 9411 which involved the interpretation of HRS § 294-2(10) as it applies to payments for chiropractic and massage therapy. See Petition at p. 24. The constitutional issues were not raised in Appeal No. 9411.

REASONS FOR DENYING THE WRIT

1. The Hawaii No-Fault Statute Does Not Deny Equal Protection to Public Assistance Recipients Even Though They are Barred from Receiving No-Fault Medical Benefits When Injured in a Vehicle Which was Insured Under the Hawaii Joint Underwriting Plan ("HJUP").

Under the Hawaii No-Fault Law (HRS Ch. 294), a welfare recipient, as defined in HRS § 294-2(18), is denied medical, rehabilitative, and lost income benefits when injured in a vehicular accident involving a vehicle covered at no-cost

under the HJUP. See HRS §§ 294-2(10), 294-22(b)(2), and 294-24(b)(2). Instead, the welfare recipient is entitled to continue to receive the full panoply of public assistance, including medical, rehabilitative, and subsistence benefits, in the event of his or her involvement in a vehicular accident. Petitioners argue that this constitutes a violation of the equal protection and substantive due process rights of welfare recipients, and accordingly, that HRS §§ 294-2(10), 294-2(18), 294-22(b)(2), and 294-24(b)(2) are unconstitutional.

More particularly, the Petitioners argue that "the rational bases found by the Hawaii Supreme Court are not sound." Petition at 40. Petitioners state that these rational bases should be "carefully" examined to assure that they truly serve a legitimate governmental interest. Petition

at 41. Petitioners have not submitted any authority or precedent for a "carefulness" test under either the due process or equal protection clauses of the Fourteenth Amendment. Furthermore, the Petitioners recognize that the Supreme Court of the State of Hawaii used the "rational basis" test and appear to concede here, as they did in the lower court, that the "rational basis" test is the proper test under the circumstances of this case. See Opening Brief, Consolidated Appeal No. 9965, at 16. In either case, FIREMAN'S FUND submits that under the particular circumstances, the "rational basis" test is the proper test under which Petitioners' equal protection and due process claims should be evaluated.

"The guarantee of equal protection ... is not a source of substantive rights or liberties, but rather a right to be free from invidious discrimination in statutory

classifications and other governmental activity." Harris v. McRae, 448 U.S. 297, 322 (1980) (footnote omitted). "Unless a statute employs a classification that is inherently invidious or that impinges on fundamental rights, areas in which the judiciary then has a duty to intervene in the democratic process, this Court properly exercises only a limited review over Congress, the appropriate representative body through which the public makes democratic choices among alternative solutions to social and economic problems. .... At the minimum level, this Court consistently has required that legislation classify the persons it affects in a manner rationally related to legitimate governmental objectives." Schweiker v. Wilson, 450 U.S. 221, 230 (1981) (citations omitted). "In the area of economics and social welfare, a State does not violate the Equal Protection

Clause merely because the classifications made by its laws are imperfect. If the classification has some 'reasonable basis,' it does not offend the Constitution simply because the classification 'is not made with mathematical nicety or because in practice it results in some inequality.' .... 'The problems of government are practical ones and may justify, if they do not require, rough accommodations - illogical, it may be, and unscientific.' .... 'A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it.'" Dandridge v. Williams, 397 U.S. 471, 485 (1970) (citations omitted).

In cases like the present one where wealth is involved, "the equal protection clause does not require absolute equality or precisely equal advantages." San Antonio School District v. Rodriguez, 411

U.S. 1, 24 (1973) (footnote omitted). As the court in Maher v. Roe, 432 U.S. 464, 470-71 (1977) (citations omitted), observed: "In a sense, every denial of welfare to an indigent creates a wealth classification as compared to nonindigents who are able to pay for the desired goods or services. But this Court has never held that financial need alone identifies a suspect class for purposes of equal protection analysis." Accordingly, the instant litigation, which deals with welfare payments, is in the area of economics and social welfare, Ortwein v. Schwab, 410 U.S. 656, 660 (1973) (citations omitted); and because no suspect classification, such as race, nationality, or alienage, is present and because we are not able to identify any fundamental rights that may be impinged by the classifications created by Hawaii's no-fault law, the applicable test of equal

protection is whether the legislative line that is drawn bears some rational relationship to a legitimate governmental purpose.

The Petitioners argue that the overall purpose of the Hawaii no-fault law is to provide a comprehensive, mandatory system of no-fault insurance, and that the intent of the law was to broaden, rather than diminish, reparations for injured persons. Petition at 40. They argue that any exception to this alleged overall goal of expanded reparations should be "carefully" examined to assure that it truly serves a legitimate governmental interest.

FIREMAN'S FUND submits that the overall purpose of the Hawaii no-fault law is not so one-dimensional. HRS § 294-1 provides, in pertinent part, that "[t]he purpose of ... [HRS Ch. 294] is to create a system of reparations for accidental harm and loss arising from motor vehicle

accidents, to compensate those damages without regard to fault, and to limit tort liability for these accidents."

When the Hawaii State Legislature first contemplated enacting Hawaii's No-Fault Act, the Conference Committee Report stated that the law was to have the following five purposes:

> (1) Provide for a speedy, adequate and equitable reparation for those injured or otherwise victimized;
>
> (2) Provide for the stabilization and reduction of motor vehicle liability insurance premium rates;
>
> (3) Provide for insurance coverage for all who require it, at a cost within the reach of every licensed driver;
>
> (4) Provide for a compulsory insurance system;
>
> (5) Provide for adequate regulatory control.

Sen. Conf. Comm. Rep. No. 4, in 1973 Senate Journal, at 635-36.

With particular reference to no-fault benefits for welfare recipients, the Hawaii State Legislature stated that:

> The definition of 'no-fault benefits' is amended to carry out the original intent of the legislature in passing the No-Fault Act. The amended definition explicitly states that the no-fault benefits provided public assistance recipients do not include the medical, rehabilitative, or income loss benefits, since these were already provided by the State. A double coverage or recovery was never intended. It was not the objective of the Act to charge the insured public with such costs. This amended definition makes plain the intent of the Legislature that recipients be afforded sufficient coverage to permit their continued auto operation so as not to discriminate unconstitutionally; that their assistance, including medical services, should continue after an auto accident; and that neither the State nor all auto insurance buyers incur any heavier or additional costs in such coverage.

Hse. Stand. Comm. Rep. No. 775-76, in 1976 House Journal, at 1646.

Notwithstanding the above-stated intent of the Hawaii State Legislature, there appears to have been continued confusion over the extent of the no-fault benefits available to welfare recipients because in 1977, they again amended the provisions covering welfare recipients. In the Hse. Stand. Comm. Rep. No. 708, in 1977 House Journal, at 1612, the Hawaii State Legislature said that:

> Section 294-2 of the Hawaii Revised Statutes is amended to make clear that no-fault benefits for public assistance recipients insured for free under the Hawaii Joint Underwriting Plan (HJUP) does not include medical, rehabilitative, and lost income benefits. Public assistance benefits will be the sole source of benefits, and as such, because there are not other legally available source [sic] of benefits to turn to, this provision does not run afoul of federal regulations providing that Medicaid shall not be a primary source of benefits.

Later in the same year, the Conference Committee Report stated with particularity the Committee's reasons for providing free no-fault insurance to welfare recipients:

> Your Committee has given careful consideration to the issue of providing free no-fault insurance to welfare recipients.
>
> Many have asked why should a person on welfare have a private passenger vehicle. Federal regulations require that public assistance recipients in the AFDC category of aid, the largest of the welfare programs, be permitted to retain cars as an allowable resource. To adopt State eligibility requirements more rigorous than those of the Federal government may effect federal funding shares of the program.
>
> Further, it should be pointed out that denying automobiles to welfare recipients has important economic ramifications. Should that happen, the State would become liable for the work related transportation expenses of 4,800 welfare recipients who are employed. The cost would be substantial. Additional cost to be borne by the State would stem from the need for those on Medicaid to transport themselves

to their health care provider. Since public transportation does not acquit itself well in the transport of the ill and infirm, especially in rural areas; the state would be paying for the use of ambulances and taxis as means of transportation.

It was then suggested that free no-fault be abolished and that claims by or against welfare recipients be handled by the assigned claims plan of the HJUP. This plan has the drawback of increasing the workload of the Commissioner in processing such claims. The current system utilizes the skill and experience of insurers to handle such administrative tasks.

The abolition of free insurance was also suggested. It should however be kept in mind that the benefits of free no-fault coverage extend not to welfare recipients but to those who become involved in vehicular accidents with a vehicle covered at no cost under the HJUP. If abolished, an injured person either turns to the assigned claims plan or to the uninsured motorist coverage of one's own policy for compensation and because of this, if free no-fault insurance affects premium rates, then abolition should also adversely affect rates. The truth is, regardless of the

source of benefits, be it free no-fault, assigned claims, or uninsured motorist, if the ultimate source is an insurance company, in theory, rates will be affected. The abolition of free no-fault has other detrimental economic consequences to the need for the State to compensate for work related and medical related transportation expenses discussed earlier.

In summary, your Committee has carefully considered the issue of providing free no-fault insurance to recipients of public assistance. The basis for your Committee's conclusion that it should be continued is: (a) that your Committee is committed to the concept that all licensed drivers in the state should be covered by motor vehicle insurance, the concept being codified in the Motor Vehicle Accident Reparations Act of 1973, (b) the feeling that the abolition of free no-fault benefits to recipients of public assistance would cause a greater economic hardship on the State and its people, and (c) the interest of the people in the State and in the insurance industry and the needs of recipients of public assistance.

Hse. Conf. Comm. Rep. No. 39 (majority), in 1977 House Journal, at 1263-64 (emphasis

added). See also Sen. Conf. Comm. Rep. No. 38 (majority), in 1977 Senate Journal, at 871-72.

The purposes or objectives garnered from the above-cited reports of limiting welfare recipients to public assistance benefits under the free policy are as follows: (1) to avoid double coverage or recovery, (2) to avoid passing the cost of the free policy on to other auto insurance buyers, and (3) to maintain the Medicaid program as the sole source of medical, rehabilitative, and lost income benefits so as not to run afoul of federal regulations, or otherwise adversely effect the federal funding shares of the program. The means chosen to accomplish the above-stated objectives provided welfare recipients with a no-cost no-fault insurance policy which would extend coverage not to welfare recipients but to those who became involved

in vehicular accidents with a vehicle covered at no cost under the HJUP. It also limited the source of medical, rehabilitative, and lost income benefits to welfare recipients injured in a vehicular accident to public assistance benefits. See Opinion of the Hawaii Supreme Court reprinted in the Appendix to the Petition. (Respondent regrets that it is unable to cite the Court to the specific page in the Petition; however, Respondent was not provided with a copy of Petitioners' Amended Petition.)

Petitioners claim that the objectives articulated above do not justify the differences in treatment given to persons with HJUP policies and those with regular policies. More particularly, Petitioners contend that the administrative convenience and double recovery prevention rationales are not adequate; that the difference in benefits is not justified; and that the

difference in net recovery of accident victims is not justified. (See the Supreme Court of the State of Hawaii's pointed and succinctly articulated rebuttals of Petitioners' arguments in its opinion reprinted in the Appendix to the Petition.)

FIREMAN'S FUND argues that the limitations placed on the free no-fault policy have a rational relationship to the objective of avoiding double coverage or recovery; that the difference in benefits is justified; and that the difference in net recovery is justified.

A public assistance recipient is entitled to full and complete coverage for medical services under the Medicaid program of 42 C.F.R. § 435 et seq. Defendant-Appellee's Answering Brief, Consolidated Appeal No. 9965, Appendix B and § 17-749, Hawaii Public Welfare Manual (Record on Appeal, Civil No. 6316(2), pp. 230-93).

These medical benefits are not limited to any prescribed amount. See Defendant-Appellee's Answering Brief, Consolidated Appeal No. 9965, at 6-8. Although the Medicaid program does not include payments for chiropractic treatment, it does provide payment for osteopathic services which encompass all the services rendered by a chiropractor. [Record on Appeal, Civil No. 6316(2), pp. 211-16.] See Defendant-Appellee's Answering Brief, Consolidated Appeal No. 9965, at 10.

Unlike Medicaid benefits, no-fault benefits are limited to $15,000 unless more coverage is purchased. See Defendant-Appellee's Answering Brief, Consolidated Appeal No. 9965, at 6-8. Also unlike Medicaid benefits, it is alleged that chiropractic and massage treatments are covered under a no-fault policy. See

Opening Brief, Consolidated Appeal No. 9965, at 13.

Presently, a welfare recipient will be reimbursed for all covered medical treatments incurred as a result of a vehicular accident from Medicaid without being limited to any set maximum amount. If the legislature were also to provide the welfare recipient with the complete no-fault policy, there obviously would be a potential problem with double coverage or recovery. In order to avoid double coverage or recovery, the state Medicaid program administrator would be required to assume an additional administrative burden, and the United States Supreme Court has stated on several occasions that administrative convenience may be considered a legitimate state interest under the rational basis standard of review. See Weinberger v. Salfi, 422 U.S. 749 (1975).

Furthermore, "the existence of 'some inequality' in the manner in which the State's rationale is achieved is not alone a sufficient basis for striking down the entire system. ... It may not be condemned simply because it imperfectly effectuates the State's goals. ... Nor must the ... system fail because, as ... [Petitioners] suggest, other methods of satisfying the State's interest, which occasion 'less drastic' disparities ..., might be conceived. Only where state action impinges on the exercise of fundamental constitutional rights or liberties must it be found to have chosen the least restrictive alternative." San Antonio School District v. Rodriguez, 411 U.S. at 51 (citations omitted). In the instant case, no fundamental rights or liberties are impinged by Hawaii's no-fault law. Accordingly, FIREMAN'S FUND avers that there is a

rational relationship between the limitations placed on the free no-fault policy and the objective of avoiding double coverage or recovery. Cf. Puzio v. New Jersey Mfr. Ins. Co., 165 N.J. Super. 585, 398 A.2d 934 (1979).

Next, FIREMAN'S FUND argues that the limitations placed on the free no-fault policy have a rational relationship to the objective of avoiding the passing on of the cost of the free policy on to other automobile no-fault insurance purchasers.

In providing for partial no-fault benefits to a welfare recipient, the legislature balanced competing public policy considerations; it weighed the need to have all drivers of vehicles on the public roads obtain no-fault coverage against the inability of the poor to purchase the required coverage. The Hawaii State Legislature also weighed the economic

consequences of denying or allowing welfare recipients access to private passenger vehicles. In the end, the legislature decided that it was in the public interest to provide the limited no-cost no-fault policy to those on welfare. It made the free no-fault policy optional, so that those who desire the full panoply of no-fault benefits could obtain them. HRS §§ 294-2(10) and 294-22(2). But decided that if the welfare recipient elected to obtain the free policy, they could only look to Medicaid to provide for their medical expenses. HRS § 294-2(10); see Hse. Stand. Comm. Rep. No. 775-76, in 1976 House Journal, at 1646. Although the benefits available under the Medicaid program and under no-fault insurance are not identical, mathematical precision is not required and surely it is not unreasonable for the state to require a public

assistance recipient who elects to obtain the free no-fault policy to "make do" with Medicaid benefits in exchange for the privilege of using the public roads. See Dandridge v. Williams, supra. As Mr. Justice Harlan stated in his dissenting opinion in Douglas v. California, 372 U.S. 353, 362 (1963), "[t]he State may have a moral obligation to eliminate the evils of poverty, but it is not required by the Equal Protection Clause to give to some whatever others can afford." "The very complexity of the problems of financing and managing a statewide ... [no-fault insurance] system suggests that 'there will be more than one constitutionally permissible method of solving them,' and that, within the limits of rationality, 'the legislature's efforts to tackle the problems' should be entitled to respect." San Antonio School District v. Rodriguez,

411 U.S. at 42 (citation omitted). Accordingly, FIREMAN'S FUND argues that the limited no-fault policy is reasonably related to the legislative goal of minimizing the cost passed on to premium paying insureds.

Finally, FIREMAN'S FUND argues that the limitations placed on the free no-fault policy have a rational relationship to the objective of avoiding any encounters with federal regulations that might adversely effect the federal funding shares of the Medicaid program. In Carleson v. Remillard, 406 U.S. 598 (1972), the United States Supreme Court held that states may not impose conditions not contained in federal Medicaid statutes. Non-compliance with federal requirements can result in a cut-off of matching funds. Rosado v. Wyman, 397 U.S. 397 (1970). HRS § 29-15 requires state officers to comply with

federal statutes "so as not to hinder or impede the State in contracting for ... financial aid from the federal government."

The threat of losing federal matching funds is a substantial consideration to the Hawaii State Legislature. They noted that "[f]ederal regulations require that public assistance recipients in the AFDC category of aid, the largest of the welfare programs, be permitted to retain cars as an allowable resource." Sen. Conf. Comm. Rep. No. 38 (majority), in 1977 Senate Journal, at 871. Therefore, they felt compelled to comply. The issue then became whether the Hawaii State Legislature was going to provide a complete no-fault policy, a limited no-fault policy, or none at all.

One of the stated objectives of the Hawaii State Legislature was to "provide for a compulsory insurance system" which required all drivers to obtain no-fault

coverage. HRS § 294-1(b). This meant that welfare recipients would need to obtain some kind of no-fault policy.

Another stated purpose of the No-Fault Law is "to stabilize and reduce insurance premium rates." By providing any free coverage to welfare recipients, the legislature recognized that the expenses of the plan would be borne by members of the insured motoring public and the premiums for no-fault policies purchased by them would reflect such cost. The legislature toyed with the idea of having the cost of insurance for welfare recipients paid out of the State's general fund, since the general public acting through its elected representatives had assumed the financial administrative responsibility for tending to the needs of the poor. They recognized that this plan, at least, "would spread these welfare costs among all the

taxpayers, rather than maintaining the present inequity of asking motorists to shoulder the burden." Sen. Conf. Comm. Rep. No. 38 (Minority Report), in 1977 Senate Journal, at 872. The Hawaii State Legislature finally decided that welfare recipients should be given a limited no-cost no-fault policy which provided coverage for injuries sustained by those who are not welfare recipients.

Even though the solution reached by the Hawaii State Legislature may not have provided for a perfect solution to the problem under all circumstances, under the rational basis test, a perfect solution is not required. If a statute furthers a state objective even in the slightest degree, the courts have affirmed its validity. Dandridge v. Williams, supra. FIREMAN'S FUND contends that the limitations placed on the free no-fault policy

are rationally related to the legitimate objectives of the Hawaii State Legislature; therefore, FIREMAN'S FUND respectfully urges this Court to deny the Petition for Writ of Certiorari in the instant case.

2. The Hawaii No-Fault Statute Does Not Deny Due Process to Public Assistance Recipients.

"It is by now well established that legislative Acts adjusting the burdens and benefits of economic life come to the Court with a presumption of constitutionality, and that the burden is on one complaining of a due process violation to establish that the legislature has acted in a arbitrary and irrational way." Usery v. Turner Elkhorn Mining Co., 428 U.S. 1, 15 (1976) (citations omitted). In the preceding subsection, FIREMAN'S FUND set out a number of reasons why the limitations on the free no-fault policy are not arbitrary and

capricious and possess a number of rational reasons for the distinction made herein. Because the classification is not arbitrary and capricious and is rationally related to a legitimate objective, the limitations placed on the free no-fault policy do not violate any due process rights contained within the federal constitution. Accordingly, Defendant-Appellee FIREMAN'S FUND respectfully request this Court to deny the Petition for Writ of Certiorari.

CONCLUSION

Petitioners have failed to raise and preserve any federal questions against Respondent FIREMAN'S FUND in the proceedings below. Accordingly, this Court is without jurisdiction to accept the Petition with respect to Appeal No. 9411. Additionally, the Supreme Court of the State of Hawaii applied the correct principles of

law and properly and correctly reached the right result under either the Hawaii State Constitution or the federal Constitution. There being no error, the Petition should be denied.

DATED: Honolulu, Hawaii,
May 16, 1986.

Respectfully submitted,

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(Counsel of Record)

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Counsel for Respondents

NO. 85-1441

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

DONNA WASHINGTON; HELENE STONE, INDIVIDUALLY AND AS NEXT FRIEND TO MARLO STONE; JEANETTE MAWAE, INDIVIDUALLY AND AS NEXT FRIEND TO JOSETTE MAWAE; ROBERTA DeMELLO; ALFRED DeMELLO, JR., INDIVIDUALLY AND AS NEXT FRIEND TO ROXANNE NAKAMURA, AND ON BEHALF OF THEMSELVES AND ALL THOSE SIMILARLY SITUATED,

PETITIONERS,

vs.

THE STATE OF HAWAII AND FIREMAN'S FUND INSURANCE COMPANIES,

RESPONDENTS.

I hereby certify that on this 16th day of May, 1986, three (3) copies of the Brief of Respondent in Opposition to Petition for Writ of Certiorari were mailed, postage prepaid, to counsel for Respondent STATE OF HAWAII, Corinne K. A. Watanabe, Attorney General of the State of Hawaii, State Capitol, Room 405, Honolulu,

Hawaii 96813, and to counsel for Petitioners, David L. Turk, 1555 Pacific Tower, 1001 Bishop Street, Honolulu, Hawaii 96813. I further certify that all parties required to be served have been served.

DATED: Honolulu, Hawaii,
May 16, 1986.

WALTER DAVIS
Counsel for Respondent
FIREMAN'S FUND
INSURANCE COMPANIES